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1 Q. And in 2002 do you know whether any of the
2 claimants were seeking compensation for anything
3 other than what you just described to me as their
4 interest in the stock in the firm?

5 A. They were seeking compensation from the two
6 deferred comp. plans, '01 and '02, and they were
7 seeking compensation from the restricted unit
8 plan, and I honestly can't remember, Mr. Harris,
9 if they were seeking just regular annual bonuses
10 as well. I just don't remember.

11 Q. You identified the March 2nd, 2003 letter that was
12 addressed to Mr. Barr?

13 MS. McCHESNEY: Exhibit 2.

14 MR. HELLER: It's actually May 2.

15 Not March 2nd.

16 MR. HARRIS: I'm sorry.

17 Q. Did you write this letter?

18 A. I did not.

19 Q. You'd agree it was dated May 2nd, 2003, correct?

20 A. Yes.

21 Q. And the article you referred to in your testimony
22 before in arbitration, The Wall Street Journal
23 article, that was in December of 2002, correct?

24 A. Correct.

25 Q. The May 2nd, 2003 correspondence is addressed to

1 Michael Barr, who is the present plaintiff in this
2 case, correct?

3 A. Yes.

4 Q. Were there others that received a similar letter?

5 A. Yes.

6 Q. How many others?

7 A. The total class, if my memory serves, was a
8 group of 42 people, managing directors and
9 principals.

10 Q. And did that class include all those who were
11 making a claim against Fleet Boston?

12 A. They included everybody who was making that
13 claim. I don't know what other claims were out
14 there.

15 Q. So, this letter was universally sent to everybody
16 that was making that claim?

17 A. That's my understanding, yes.

18 Q. Right. And the letter of May 2nd is not signed by
19 anyone other than it says Robertson Stephens Comp.
20 I think -- Group?

21 A. Group.

22 Q. Inc.?

23 A. Yes.

24 Q. Do you know who wrote this letter?

25 A. Well, based on the tone, I would say a lawyer

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1 wrote it, but I don't know which lawyer wrote it.

2 Q. Did you read it and review it?

3 A. Yes, I did, because I'm in it.

4 Q. You were in the executive group?

5 A. No. I'm in the letter.

6 Q. I know that. The letter in its first paragraph
7 says that Robertson Stephens Group, Inc., -- I'm
8 paraphrasing -- has reviewed the above plans and
9 agreements and has determined that you are due no
10 payments or awards of stock as a result of actions
11 taken in violation of Section 8.1 of the cash
12 equivalent plans, and Section 4.6 of the
13 restricted unit plan, and Section 8 of the
14 restricted unit award agreement; is that correct?

15 A. Yes.

16 Q. And do those three sections relate to bad boy
17 provisions?

18 A. Yes.

19 Q. All of them?

20 A. Yes.

21 Q. Do you know why it was that the specific conduct
22 of each of these claimants was not spelled out in
23 this letter that was deemed to be disparaging?

24 A. I don't know why.

25 Q. You were a member of the executive committee, were

1 you not?

2 A. I don't remember.

3 Q. I believe that was your testimony at the
4 arbitration, but if you don't remember that,
5 that's fine.

6 A. I don't remember.

7 Q. It says, as you are aware, actions and conduct
8 following your termination of employment have
9 violated one or more of these provisions of the
10 plans and agreement and constitute a basis for
11 cancellation. Can you and I agree that the
12 actions or conduct are not defined in this letter?

13 A. No, they're not specified in this letter.

14 Q. The second paragraph states, "Should you have any
15 questions concerning the foregoing, your legal
16 counsel is directed to contact counsel for RSGI,
17 Elaine McChesney, Esquire, at Bingham McCutcheon,"
18 and it gives the address of that law firm. And
19 Ms. McChesney sits next to you today as your
20 lawyer, correct?

21 A. Yes.

22 Q. So I assume that whoever drafted this letter
23 wanted to direct claimants who had a lawyer to
24 contact the firm's lawyer, Ms. McChesney, to
25 discuss a legal issue?

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1 A. Correct.

2 Q. So I would assume that that paragraph was directed
3 to those claimants who were represented by
4 counsel, correct?

5 MR. HELLER: Objection. You can
6 answer.

7 Q. It says have your legal counsel contact our legal
8 counsel --

9 A. Yes.

10 Q. -- that's what it says; right?

11 A. Yes.

12 Q. So, the next sentence says, "If you are not
13 represented by counsel and have any questions, you
14 may contact Lisa Bisaccia, director of
15 compensation and benefits at One Federal Street,
16 Boston, Massachusetts." Do you see that?

17 A. Yes.

18 Q. Had the executive committee or had the management
19 of Robertson Stephens as of May 2nd, 2003
20 determined that those who were not represented by
21 counsel had also conducted acts or conduct that
22 were violative of the bad boy provision?

23 A. They had decided that everyone who was in the
24 Alt group had violated the provisions.

25 Q. And why would that be? What was the basis of that

1 decision, as far as you know?

2 A. The Wall Street Journal article.

3 Q. So, The Wall Street Journal article damned
4 everyone, whether you were represented by counsel
5 or not?

6 MS. McCHESNEY: Objection. That's
7 not what she said.

8 MR. HARRIS: You can answer.

9 A. The Wall Street Journal article was about the
10 Alt group or class, whatever you call them, and
11 Fleet made a decision that because of what was
12 said about Fleet in the article by Mr. Liddle,
13 that -- since he was their lawyer, that they
14 violated the bad boy provisions.

15 Q. So, they made a decision that those who were
16 represented by Mr. Liddle violated the bad boy
17 provisions, and those who were not represented by
18 Mr. Liddle violated it as well, correct?

19 MS. McCHESNEY: Objection.

20 A. I'm not aware of that decision, no. We never
21 had that conversation.

22 Q. Did any claimant who was unrepresented contact you
23 as this letter suggests they do?

24 A. Yes.

25 Q. Who was that?

1 A. Michael Barr.

2 Q. And he was not represented by counsel?

3 A. He contacted me, and I referred him over to
4 Elaine because he was represented by Mr. Liddle.
5 So we had a very brief conversation, if memory
6 serves, and then I said to him you need to talk to
7 Bingham, because Mr. Liddle is your lawyer.

8 Q. I see. When you spoke to Mr. Barr, were there any
9 discussions with him about the case itself?

10 A. Not that I recall.

11 Q. Did you indicate to him that he would be paid his
12 deferred compensation if he signed a release
13 regarding the claims he was making against the
14 bank?

15 A. I don't remember that, no.

16 Q. Now, you've indicated to me that the bank made its
17 decision on what you said was attributable to
18 Mr. Liddle, correct?

19 A. In the Wall Street Journal article.

20 Q. Why don't we take a look at that for a moment, The
21 Wall Street Journal article. It's been marked as
22 4. I'm sure you've seen this many times in the
23 past.

24 A. Yes.

25 Q. Can you and I agree on reading this article that

1 Mr. Liddle, the defendant in this case, is
2 referred to in one paragraph as part of the
3 article, and it can be found on -- it's on Page 2
4 of 6 the very last paragraph?

5 A. That's the only time he's mentioned by name,
6 yes.

7 Q. Right -- well, let me read you what this paragraph
8 says, okay, which is attributable to Mr. Liddle.
9 "Jeffrey Liddle, a lawyer in New York, who is
10 representing the group, says the executives are
11 seeking damages from Fleet Boston, including back
12 pay for the 2002 and compensation for what he
13 estimates to be their 45.6 million equity interest
14 in Robertson which was approximately 23 percent
15 employee owned." Do you see that?

16 A. Yes.

17 Q. Is there any quotations in there which would
18 indicate that the reporters are quoting Mr. Liddle
19 verbatim?

20 A. No.

21 Q. Is there anything in that sentence that in your
22 judgment violated the bad boy provisions?

23 A. In that sentence, no.

24 Q. Now, it says, Mr. Liddle asserts that the bank's
25 actions during the sales process drove down the

1 value of the employees' stake in Robertson and
2 damaged their reputations. Can you and I agree
3 that Mr. Liddle is not quoted in that sentence?

4 MR. HELLER: Objection.

5 THE WITNESS: Verbatim?

6 MR. HARRIS: Yes, ma'am.

7 A. There are no quotes, so it's not verbatim.

8 Q. So, we don't know whether the language in that
9 sentence is that of the reporter's or somebody
10 else's?

11 A. Correct.

12 Q. And we don't know from that statement whether the
13 phrase, "Mr. Liddle asserts," comes from the
14 actual claim that was filed in arbitration as
15 opposed to anything Mr. Liddle said directly to
16 The Wall Street Journal, do we?

17 A. No, I don't know that.

18 Q. Was there any investigation by Fleet Bank into the
19 accuracy of the paragraph you and I are now
20 discussing before it chose to withhold
21 compensation from Mr. Barr?

22 A. I have no idea.

23 Q. Do you know whether there was any effort on behalf
24 of Fleet Bank to contact the reporter who wrote
25 this article to determine whether in fact Mr.

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1 Barr's lawyer said the things they attribute to
2 him or that you attributed to him?

3 A. I don't know.

4 Q. The Wall Street Journal article does have quotes
5 attributable to some individuals mentioned in the
6 article, correct?

7 THE WITNESS: Say that again?

8 Q. The Wall Street Journal that we're talking about,
9 the article, quotes a person by the name of
10 Mr. Mahoney?

11 A. Yes.

12 Q. Do you know Mr. Mahoney?

13 A. I did, yes.

14 Q. What was his position?

15 A. He was in the external communications
16 department, public relations.

17 Q. Of what company?

18 A. Of Fleet Boston.

19 Q. Had you had any discussions with Mr. Mahoney about
20 the article?

21 A. I had not.

22 Q. As I understand your testimony before the
23 arbitration regarding this discrete issue, I think
24 you said that you read the article and thought
25 that it might be violative of the bad boy

1 provision, correct?

2 A. I read the article, and I thought that what
3 they were saying about Fleet and the fact that
4 they obviously -- they had given, in my opinion,
5 they had given the claim documents to The Wall
6 Street Journal, was violating both the bad boy
7 provisions and confidentiality and could be
8 grounds for canceling the payments based on those
9 provisions, so I referred it to the lawyers.

10 Q. You didn't make the decision?

11 A. No, I did not.

12 Q. But were you on the executive committee that
13 finally decided to forfeit the deferred payments
14 to Mr. Barr and others?

15 A. I was not part of that decision.

16 Q. I believe your testimony at the arbitration was
17 that you felt the article indicating that Fleet
18 deliberately sabotaged the sale of Robertson
19 Stephens to avoid paying bonus deferred
20 compensation, and you felt that was disparaging,
21 correct?

22 A. I wouldn't put it that way. I felt the
23 article disparaged Fleet because it intimated that
24 Fleet had deliberately tried to sabotage the sale,
25 hadn't tried to sell it in good faith, and that

1 the article said Fleet made compensation promises
2 that it had no intention of satisfying or
3 fulfilling, and it said that Fleet had --

4 Q. I know what it said --

5 A. -- had damaged the reputation of the
6 executives.

7 Q. I know what it said. I'm not going to belabor
8 this, but I'll have to point it out later, is it
9 not true that you never mentioned the
10 disparagement of the executives or that Fleet had
11 damaged the reputation of the executives in any of
12 your prior arbitration testimony?

13 A. I don't remember that. I don't know why you
14 say that.

15 Q. Because I didn't see it, and I didn't read it, so
16 it's not there?

17 A. The reason I thought this article was
18 indicating that Robertson and their lawyer were
19 disparaging Fleet was because of what it says. It
20 says that we didn't do the sale in good faith,
21 that we made promises we never intended to keep,
22 and we said bad things about their business
23 acumen.

24 Q. But that was not your testimony before the
25 arbitration board?

1 MR. HELLER: Objection.

2 Q. The statement before the arbitration board I
3 believe stated that you thought it violated the
4 bad boy provision for the reasons that I expressed
5 to you. We have a difference of agreement and the
6 jury will have to decide.

7 MR. HELLER: Is that a question?

8 MR. HARRIS: Yes, it is.

9 MR. HELLER: No, it isn't

10 MS. McCHESNEY: I have an objection to
11 the form as well.

12 Q. Do you recall your testimony at arbitration
13 regarding whether you were of the opinion that --
14 I'll rephrase the question or withdraw it and
15 start again. I'm going to refer you to the
16 transcript of your testimony that was taken on
17 March 9th, 2005, specifically Pages 83 to 84. You
18 were asked whether or not the words in the article
19 regarding deliberately sabotaging the sale of the
20 company --

21 MS. McCHESNEY: What page are you on?

22 MR. HARRIS: I'm sorry, Page 83.

23 THE WITNESS: Of March 9?

24 MR. HARRIS: Yes, March 9th.

25 THE WITNESS: I don't have that.

1 MR. HELLER: I don't see the word
2 sabotage.

3 THE WITNESS: I have scheduling
4 discussions.

5 MR. HARRIS: Hearing sessions 11 and
6 12.

7 MS. McCHESNEY: Sessions 13 and 14.

8 MS. McCHESNEY: It's Exhibit 5.

9 (OFF THE RECORD)

10 MR. HARRIS: If you were just to go
11 to Page 1442 in this transcript.

12 MS. McCHESNEY: Page 1442 which is
13 Page 109 of Exhibit 5.

14 Q. You were being questioned about The Wall Street
15 Journal article. The questioner asks, "Did you
16 find any quotes at all from any of the claimants
17 in this?" And I assume he's talking about the
18 Wall Street Journal article. And you say, "No."
19 Do you see that?

20 A. Yes.

21 Q. And the questioner was Liddle and you said, "Well,
22 you're not in quotes but they report that. They
23 report what it is. They said you said it."
24 Question, "I see. Okay. With regard to that, let
25 me ask you, you didn't find that to be

1 disparaging, did you?" "No." That was my
2 question, that confidentiality, and the question
3 is, "That's good, glad to hear it." And then they
4 move on to something else?

5 So, is it not true that what you believed was
6 violative of certain provisions attributable to
7 Mr. Liddle dealt with confidentiality and was not
8 disparagement, correct?

9 A. I don't know what that is. When he asks you
10 don't find that to be disparaging, I'd have to
11 read going back in the transcript. Can I do that?

12 MR. HARRIS: Yes, please.

13 (PAUSE)

14 A. I still don't know what that is. I can't --
15 without the context I can't comment on this.

16 Q. I think that is the comment regarding the
17 sabotaging the sale --

18 MR. HELLER: Objection.

19 Q. -- and what was found in the claim as opposed to
20 what was found in the article?

21 MR. HELLER: Once again, I object as
22 to form.

23 MS. McCHESNEY: I object as well.

24 THE WITNESS: I'm sorry, I'm not
25 following your line of questioning. Sorry.

1 Q. I'll do it this way: Before The Wall Street
2 Journal article was published, did you have
3 knowledge that a claim had been made against Fleet
4 Boston by these particular claimants?

5 A. No, I didn't.

6 Q. Did anyone, as far as you know, at Fleet Boston
7 have that information?

8 A. I don't know.

9 Q. Can you tell me when the first time it was you
10 became aware that a claim made by Mr. Barr and
11 others was made?

12 A. I think it was concurrent with this article
13 coming out. I don't remember exactly how I
14 learned about the claim.

15 Q. Same day?

16 A. I don't remember. It's 15 years ago.

17 Q. Do you know which you read first, or were aware of
18 first, the article or the claim?

19 A. I never read the claim.

20 Q. You never read the claim?

21 MR. HELLER: Witness shook her head.

22 A. No.

23 Q. Did you believe that at the time you read the
24 article that the claimants had disparaged the
25 company disassociating them from Liddle for the

1 time being?

2 MS. McCHESNEY: Objection. You mean
3 outside of The Wall Street Journal article?

4 MR. HARRIS: By the Wall Street
5 Journal article, by having it in there.

6 A. I don't remember making that distinction,
7 Mr. Harris. I read the article, read what was
8 said in the article, what was asserted by
9 Mr. Liddle, what the content of the article -- in
10 my non-legal opinion, said this is something that
11 I think could be violation of the bad boy
12 provisions, I'm going to ask the lawyers what they
13 think about it. I didn't dissect out who said
14 what.

15 Q. And did you write some memorandum to whoever the
16 lawyers were that were going to review this issue,
17 setting forth your thoughts about this?

18 A. I did not write anything. We had a
19 conversation.

20 Q. Did the lawyers ever write to you and tell you
21 what their opinions were regarding this issue?

22 A. No.

23 Q. Do you know whether or not the attorneys who made
24 the decision to defer compensation wrote any
25 explanation of their decision to Mr. Barr?

1 MR. HELLER: Objection as to form.

2 THE WITNESS: Who made the decision
3 to defer compensation or to withhold the deferred
4 compensation?

5 MR. HARRIS: Withhold it or forfeit
6 it.

7 Q. Did they ever express to any of the claimants
8 including Mr. Barr what their -- the basis of that
9 decision was?

10 A. I don't know other than the May 2003 letter.

11 Q. Do you have any facts that would help me
12 understand why it took from December, when The
13 Wall Street Journal article was written, to May of
14 2003, December 2002 to May of 2003 why it took so
15 long to decide whether or not something that
16 occurred in December 2002 was disparaging
17 requiring forfeiture?

18 A. No.

19 Q. Do you know whether between The Wall Street
20 Journal article and the May 2nd, 2003 letter
21 whether any of the claimants had been offered by
22 the company the deferred payment if they release
23 any rights that they had regarding the arbitration
24 and claims they were making against BankBoston?

25 A. I don't know that.

1 Q. Before testifying this morning did you review any
2 documents --

3 A. Yes.

4 Q. -- to prepare?

5 A. Yes.

6 Q. And tell me what you reviewed?

7 A. I reviewed the article, the letter, the May
8 2003 letter, the deferred comp. plan, the SEP
9 plan, and I think those were the documents I
10 reviewed -- oh, I had some copies of my
11 transcripts, but I did not read them through.

12 Q. Did you have any conversations with Mr. Barr --

13 A. No.

14 Q. -- about your testimony?

15 A. No.

16 Q. After The Wall Street Journal article was
17 published, did you have any conversations, other
18 than what you've testified to, with Mr. Barr
19 before the May 2nd, 2003 letter was written?

20 MR. HELLER: Objection as to form.

21 And just to let you know, for the record, she
22 testified that the conversation was after the May
23 2nd letter.

24 MR. HARRIS: I understand.

25 A. Not that I recall, no.

1 Q. In the conversation that you did have with Mr.
2 Barr, did he make inquiry as to why he wasn't
3 getting his deferred compensation?

4 A. I don't remember.

5 Q. Do you recall how long that conversation took
6 place?

7 A. I recall it was very brief. He was
8 represented by counsel.

9 Q. You don't have any memory of making him any offers
10 during that conversation?

11 A. No.

12 Q. Did the legal team that made the decision to
13 forfeit the deferred compensation interview you?

14 THE WITNESS: About what?

15 MR. HARRIS: Your feelings about what
16 the impact of the Wall Street Journal.

17 A. I went to them and said I read this, sparked
18 a thought, this is what I think, what do you
19 think. If you call that an interview, we talked
20 about it, yes.

21 Q. What I mean is was there some formal meeting to
22 deal with your thought and determine what to do
23 about it?

24 A. I was not part of that, no.

25 Q. Were you aware of any social media or any other

1 media before The Wall Street Journal article came
2 out that placed Fleet in a disparaging light?

3 A. No.

4 Q. I think you indicated in your testimony at
5 arbitration that in your view the confidentiality
6 provisions may have been violated in the Wall
7 Street Journal article, correct?

8 A. Yes.

9 Q. Do you know whether the attorneys for Fleet Bank
10 agreed with you regarding that issue?

11 A. I think they did. We never had a subsequent
12 specific conversation about the basis on which
13 they made their recommendation to withhold the
14 compensation. So I can't speak with any
15 specificity as to why they made the recommendation
16 they did.

17 Q. Do you know whether compensation, deferred
18 compensation was forfeited regarding claimants who
19 were not represented by Liddle & Robinson?

20 MS. McCHESNEY: Objection. When you
21 use the word claimants, do you mean someone who
22 has filed an arbitration claim?

23 MR. HARRIS: Yes.

24 MR. HELLER: Who was not represented
25 by Liddle & Robinson?

1 MR. HARRIS: Yes.

2 MR. HELLER: There were separate
3 arbitration claims by others.

4 MR. HARRIS: Generally speaking.

5 Q. Did the company forfeit deferred compensation to
6 people other than those represented by Liddle
7 Robinson?

8 A. I don't know. I don't remember.

9 Q. Do you know whether there were any claims being
10 made against the bank by others who were in fact
11 not represented by Liddle & Robinson?

12 A. There were lots of claims against the bank
13 and I assume Liddle & Robinson didn't handle all
14 of them, but I don't know all the claims that were
15 being filed against Robertson and the bank.

16 Q. Were their claimants who signed a release
17 regarding the ongoing arbitration or litigation in
18 exchange for receipt of deferred compensation
19 after The Wall Street Journal article came out?

20 MR. HELLER: Can I hear that question
21 again, please?

22 (QUESTION READ)

23 MS. McCHESNEY: Again, I object to
24 the word claimant, and to the extent that there
25 were settlements with officially claimants or

1 plaintiffs in other cases, all those settlements
2 were subject to a confidentiality agreement.

3 MR. HARRIS: With all due respect, I
4 don't think you have a right to object, you're not
5 a party.

6 MS. McCHESNEY: I certainly have a
7 right when you're asking a witness to violate a
8 confidentiality provision in an agreement that was
9 entered into by her former employer at the time
10 when she was employed.

11 MR. HARRIS: I don't know what you're
12 saying is accurate or not, but all I'm suggesting
13 to you is you can put something on the record, but
14 I do not believe that in view of the fact that you
15 are simply representing a witness you have a right
16 to object.

17 MR. HELLER: So I'm going to state
18 that objection. I'm representing the plaintiff
19 here, so that objection is stated.

20 MR. HARRIS: What is the nature of
21 the objection?

22 MR. HELLER: I don't want the witness
23 to violate a confidentiality agreement.

24 MR. HARRIS: What confidentiality
25 clause is it?

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1 MR. HELLER: I don't know. Ms.
2 McChesney said there may be one.

3 MS. McCHESNEY: To the extent that
4 there were settlements with other plaintiffs who
5 had filed lawsuits or in other arbitrations, every
6 such settlement agreement had a confidentiality
7 provision. So, if you want to rephrase the
8 question in a general way that would not violate
9 the confidentiality provisions, you can try to do
10 that. But I am not going to let the witness talk
11 about a particular settlement agreement with other
12 plaintiffs who are not part of the Alt
13 arbitration.

14 MR. HARRIS: I'm not asking for
15 details of the settlement at all. I just want to
16 know whether or not there were claimants who
17 settled their claims with the bank, whether they
18 were Alt claims or not, in exchange for deferred
19 compensation. I don't want to know the details of
20 it.

21 MR. HELLER: That is a detail because
22 that may be giving up deferred compensation which
23 is a term of a confidential settlement agreement.

24 MR. HARRIS: I don't think so at all.

25 MS. McCHESNEY: That is one of the

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1 details of any kind of settlement. Certainly with
2 respect to the Alt plaintiffs the record below is
3 clear that none of them settled, they all, 42 of
4 the original claimants, went all the way through
5 the arbitration.

6 MR. HARRIS: You're not letting her
7 answer the question?

8 MS. McCHESNEY: If you can rephrase
9 the question in such a way that it would not
10 reveal details of any settlement agreement, or you
11 can establish the witness doesn't have knowledge
12 because I do not know the answer as to whether she
13 knows about the details of any other settlement
14 agreement or not.

15 Q. Do you know whether there were claimants who were
16 not part of the lawsuit who refused to sign a
17 release and whose cash equivalency was forfeited?

18 A. I don't know.

19 Q. Did you testify at your arbitration that there may
20 have been?

21 A. I don't remember.

22 Q. Do you have any idea what the rationale for the
23 forfeiture, had there been one, under those
24 circumstances, could have been?

25 MR. HELLER: Objection as to form.

1 A. I don't understand the question.

2 Q. Other than Mr. Barr, did any other claimant who
3 was unrepresented contact you in relation to the
4 May 2nd, 2003 letter?

5 MR. HELLER: Objection as to form.

6 MS. McCHESNEY: Objection.

7 A. Mr. Barr was represented.

8 Q. I'm asking for anyone who was not represented,
9 anyone else; did anyone else call you other than
10 Mr. Barr?

11 A. I don't remember speaking to anyone else.

12 Q. Do you know whether Mr. Liddle had a prior
13 litigation against Fleet Bank?

14 A. I don't know.

15 Q. In the documents regarding compensation, are you
16 aware of -- and deferred cash payments, there's a
17 provision dealing with change of control. Are you
18 aware of that provision?

19 THE WITNESS: Can I look at the
20 plan?

21 MR. HARRIS: Yes.

22 A. Yes.

23 Q. Did you have any role in drafting that provision?

24 A. Drafting it, I did not.

25 Q. Do you know who did?

1 A. The lawyers who drafted this plan, I believe.
2 I don't remember whether it was outside counsel or
3 inside.

4 Q. Do you have an understanding as to what the change
5 of control provisions mean?

6 A. Yes.

7 Q. Can you explain that to me?

8 A. So, change of control provisions in a
9 compensation plan are provisions that provide for
10 some specified treatment of the compensation in
11 question, if there's been a change in control as
12 defined by the plan document.

13 Q. Was there a change in control by December of 2006
14 regarding Robertson Stephens?

15 THE WITNESS: 2006?

16 MR. HARRIS: I'm sorry, 2002.

17 A. No.

18 Q. Why not?

19 A. There was no change in control. Fleet still
20 owned Robertson Stephens.

21 Q. And would there be a change in control if Fleet
22 shut down Robertson Stephens?

23 A. My understanding of the legal interpretation
24 of that is no. It wasn't my call.

25 Q. Where did you obtain that understanding, from what

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1 lawyers in your firm -- in the company?

2 A. Lauren Mogenson.

3 Q. Did she draft a document explaining her position
4 regarding change in control?

5 A. I have no idea.

6 Q. Did she provide an indication to you that
7 liquidation is or is not a change in control?

8 A. My recollection is that liquidation was not a
9 change in control.

10 Q. What was the status of Robertson Stephens as of
11 the writing of the Wall Street Journal article?

12 A. So almost all of the employees had been
13 released, I think there were still a few around
14 who were doing some essential functions, payroll
15 and IT. Business operations had ceased, we closed
16 the offices.

17 Q. Did you have an opinion as to whether by filing a
18 claim against Fleet, that that act was against the
19 interest of Fleet Boston and disparaging?

20 A. That the act of filing a claim was in itself
21 disparaging?

22 MR. HARRIS: Yes.

23 A. Yes, I had an opinion.

24 Q. What was it?

25 A. Just filing a claim isn't a disparaging act.

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1 Q. Despite what the claim alleges?

2 A. No, that's different. Just the act of filing
3 a claim isn't disparaging. It depends what the
4 claim says.

5 Q. So if a claim asserts a dispute with the bank, and
6 you felt the allegations in that dispute were
7 against the interest of the bank, would you
8 believe that would be disparaging?

9 MR. HELLER: Objection as to form.

10 MS. McCHESNEY: Objection.

11 A. I believe that the allegations made in the
12 claim were disparaging. Not the act of filing a
13 claim. If we're talking about Alt --

14 MR. HARRIS: Yes, we are.

15 Q. So would you be of the opinion that the attorney
16 who files the claim on behalf of his client is
17 likewise disparaging the bank?

18 MR. HELLER: Objection as to form.

19 THE WITNESS: Just by nature of
20 filing the claim?

21 MR. HARRIS: Yes.

22 A. No.

23 Q. No matter what it said?

24 A. I didn't say that. I just said the act of
25 filing a claim is not a disparaging act.

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1 Q. Now let's assume that the attorney in filing the
2 claim on behalf of his clients brings the action
3 based on the information brought to him by his
4 clients, which may or may not be disparaging, and
5 files that complaint, would you be of the opinion
6 that the attorney is likewise disparaging the bank
7 by just bringing the action?

8 A. I think I've answered that a couple of times.

9 MS. McCHESNEY: Objection.

10 Q. I'll rephrase it. I think it's too cumbersome.
11 If the assertion made by a lawyer's clients in
12 fact disparaged the bank, and he brings that
13 action, are you of the opinion that the attorney
14 as well is disparaging the bank?

15 MR. HELLER: I want to hear the
16 question again.

17 MS. McCHESNEY: Could you read it
18 back, please?

19 (QUESTION READ)

20 MR. HELLER: I'll object as to form.

21 MS. McCHESNEY: I will as well.

22 A. I don't know.

23 Q. In this case Mr. Liddle brought an action?

24 A. Yup.

25 Q. He brought an action on behalf of his clients.

1 The action set forth in the complaint set forth
2 facts that he asserts were true. Are you of the
3 opinion that by advancing those facts in a
4 complaint on behalf of his clients, Mr. Liddle
5 disparaged the bank?

6 MR. HELLER: Objection as to form.

7 MS. McCHESNEY: Object.

8 A. I believe that Mr. Liddle's allegations were
9 disparaging. I don't believe they were facts.

10 Q. Well, what do you mean by Mr. Liddle's
11 allegations, the allegations he's bringing on
12 behalf of his clients?

13 A. His allegations that Fleet had sabotaged the
14 sale and that Fleet had made compensation promises
15 that it had no intention of fulfilling were
16 disparaging.

17 Q. Okay. So, if those statements were provided to
18 him by his clients, and he puts them in his
19 complaint, are you of the opinion that the act of
20 being a lawyer in that regard is disparaging to
21 the bank?

22 MR. HELLER: Objection as to form.

23 MS. McCHESNEY: Objection.

24 A. I can't answer that question.

25 Q. Well, can you and I agree that The Wall Street

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1 Journal does not quote Mr. Liddle?

2 MR. HELLER: Objection. Asked and
3 answered 20 times.

4 MR. HARRIS: You can answer it again.

5 A. It doesn't quote him verbatim with quotation
6 marks, as I think we've established.

7 Q. Yes, we have. And so if there's no quotations,
8 and Mr. Liddle is speaking on behalf of his
9 clients, or doesn't speak at all, and those are
10 words of a reporter -- I'll strike that.

11 MR. HELLER: Thank you.

12 Q. Let me start again. I'm going to ask it until I
13 get an answer. If a lawyer brings an action
14 against Fleet, and the words in that action you
15 deem to be disparaging to the interests of the
16 bank, are you of the opinion that the lawyer
17 himself has disparaged the bank?

18 MR. HELLER: Objection. Calls for a
19 legal conclusion, and the witness answered that
20 question many times already.

21 MR. HARRIS: You can answer the
22 question.

23 MS. McCHESNEY: Objection.

24 A. I don't know the answer to that. I thought
25 the words were disparaging. I referred it to the

1 lawyers, and the arbitration panel made a
2 decision.

3 MR. HARRIS: I have no further
4 questions.

5 MR. HELLER: Let me just take a few
6 minutes with Mr. Barr. So if you want to take a
7 break, I want to see if there's anything I want to
8 ask.

9 (BRIEF RECESS)

10 FURTHER EXAMINATION BY MR. HELLER

11 Q. Were you aware that Liddle & Robinson sent the
12 statement of claim to the Wall Street Journal
13 before it was filed?

14 A. I became aware of it once I read The Wall
15 Street Journal article, but I wasn't aware he was
16 going to do it at the time he did it.

17 MR. HELLER: I have no further
18 questions.

19 FURTHER EXAMINATION BY MR. HARRIS

20 Q. How did you get that awareness?

21 A. By, A, what was in the article and, B, the
22 lawyers told me.

23 Q. When did the lawyers tell you?

24 A. I don't remember. Some time in that time
25 period.

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1 Q. Well, if you didn't read it before you read The
2 Wall Street Journal article, how did you know that
3 it existed?

4 A. We talked about how did the reporter get all
5 this information.

6 Q. What about Mr. Mahoney -- I'll ask you another
7 question. It's true that nobody contacted The
8 Wall Street Journal to find out where they got the
9 information from, did they?

10 A. I don't know. I didn't contact them.

11 Q. You didn't. Did any of the lawyers that were
12 talking to you do it, if you know?

13 A. I don't know.

14 MR. HARRIS: I have no further
15 questions.

16 MR. HELLER: Thank you, very much,
17 for your time.

18 THE REPORTER: I'd like to get
19 orders on the record, please.

20 MR. HELLER: Original plus two
21 copies. Original to the witness and copy to the
22 other side, but send everything to me, and also
23 electronic.

24 (DEPOSITION CLOSED AT 12:52 P.M.)

25

C-E-R-T-I-F-I-C-A-T-E

I, LINDA L. GUGLIELMO, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court of Rhode Island, especially, but without restriction thereto, under Rule 28 of said Rules; that the witness was first sworn by me; that the transcript contains a true record of the proceedings.

Reading and signing of the transcript was not requested by the deponent or any parties involved upon completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of October 2017.

Linda L. Guglielmo
Notary Public


LINDA L. GUGLIELMO, NOTARY PUBLIC/RPR-RMR
(MY COMMISSION EXPIRES AUGUST 13, 2021)

IN RE: BARR VS. LIDDLE & ROBINSON, ET AL.
DATE: SEPTEMBER 29, 2017
WITNESS NAME: LISA BISACCIA

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